

ETHICS LAW PRINCIPLES FOR PUBLIC SERVANTS:

Key Things to Know

Note that the following are not statements of law, but rather principles the law is designed to achieve.

The goal in providing this list is to identify the kinds of issues addressed by public service ethics laws.

If an issue arises under these principles, public officials should consult agency counsel.

Personal Financial Gain Laws

Generally speaking, California law says public officials:

- Cannot request, receive or agree to receive anything of value or other advantages in exchange for a decision.
- Must disclose their financial interests to the public.
- Must disqualify themselves from participating in decisions that may affect (positively or negatively) their financial interests.
- Cannot have an interest in a contract made by their agency.
- Cannot acquire interests in property within redevelopment areas over which they have decision-making influence.
- May only sell property to their redevelopment agency through eminent domain proceedings.
- Cannot be involved in agency decisions that affect an official's future employer.
- Cannot lobby their agency for pay for a year following their departure from the agency.

For more information on these laws, see *Understanding the Basics of Public Service Ethics: Personal Financial Gain Laws* at www.ca-ilg.org/financialgain.

Perk Issues: Including Compensation, Use of Public Resources and Gift Laws

Generally speaking, California law says public officials:

- Receive limited compensation for their service to the public.
- Cannot receive compensation for speaking, writing an article or attending a conference.
- Are reimbursed for only those expenses allowed in agency expense reimbursement policies because those expenses have a demonstrable public purpose and necessity.
- Cannot use public agency resources (money, travel expenses, staff time and agency equipment) for personal or political purposes.
- Cannot send mass mailings at public expense.
- Cannot make gifts of public resources or funds.
- Must disclose all gifts received of \$50 or more and may not receive gifts aggregating to over \$420 (2009-10) from a single source in a given year.
- May only accept free trips and travel expenses under limited circumstances.
- May not accept free or discounted transportation from transportation companies.
- May not use campaign funds for personal benefits not directly related to a political, legislative or governmental purpose.

For more information on these laws, see *Understanding the Basics of Public Service Ethics: Perk Issues, Including Compensation, Use of Public Resources and Gift Laws* at www.ca-ilg.org/perks.

Transparency Laws

Generally speaking, California law says public officials:

- Disclose their economic interests when they take office, annually while they are in office and when they leave office. These economic interests include such kinds of interests as: sources of income, property ownership, investments, certain family members' interests, business interests, loans, contracts and gifts received.
- Disclose information about who has agreed to commit significant resources (\$5,000 or more) to legislative, governmental or charitable purposes at an elected official's request.
- Disclose campaign contributions.
- Conduct the public's business in open and publicized meetings, except for the limited circumstances when the law allows closed sessions.
- Allow the public to participate in meeting, listening to the public's views before decisions are made.
- Allow public inspection of documents and records generated by public agencies, except when non-disclosure is specifically authorized by law.
- Disclose gifts given to the public agency and how they are ultimately used.

For more information on these laws, see *Understanding the Basics of Public Service Ethics: Transparency Laws* at www.ca-ilg.org/transparency.

Fair Process Laws and Merit-Based Decision-Making

Generally speaking, California law says public officials:

- Cannot receive loans from those within the agency or with whom the agency contracts; loans from others must meet certain requirements.
- Cannot engage in vote-trading.
- Have a responsibility to assure fair and competitive agency contracting processes.
- Cannot participate in quasi-judicial proceedings in which they have a strong bias with respect to the parties or facts.
- Must conduct public hearings in accordance with due process principles.
- Cannot participate in decisions that will benefit their immediate family (spouse or domestic partner and dependent children).
- Cannot simultaneously hold certain public offices or engage in other outside activities that would subject them to conflicting loyalties.
- Cannot participate in entitlement proceedings—such as land use permits—involving campaign contributors (does not apply to elected bodies).
- Cannot solicit campaign contributions of more than \$250 from permit applicants while an application is pending and for three months after a decision (if sitting on an appointed board).
- Cannot solicit agency employee support for their political causes.
- Cannot retaliate against those who whistle-blow.

For more information on these laws, see *Understanding the Basics of Public Service Ethics: Fair Process Laws and Merit-Based Decision-Making* at www.ca-ilg.org/fairprocess.

In addition to state law, federal anticorruption law broadly guarantees the public “honest services” from public officials. Depriving the public of honest services is a federal crime.

Public Official's Conflict of Interest Checklist

KEY CONCEPTS

- ✓ A public agency's decision should be based solely on what best serves the public's interests.
- ✓ The law is aimed at the perception, as well as the reality, that a public official's personal interests may influence a decision. Even the temptation to act in one's own interest could lead to disqualification, or worse.
- ✓ Having a conflict of interest does not imply that a public official has done anything wrong; it just means that the official has financial or other disqualifying interests.
- ✓ Violating the conflict of interest laws could lead to monetary fines and criminal penalties for public officials. Don't take that risk.

BASIC RULE

A public official may not participate in a decision – including trying to influence a decision – if the official has financial or, in some cases, other strong personal interests in that decision. When an official has an interest in a contract, the official's agency may be prevented from even making the contract.

WHEN TO SEEK ADVICE FROM AGENCY COUNSEL

The rules are very complex. A public official should talk with agency counsel 1) early and often, 2) when an action by the public agency, 3) may affect (positively or negatively), 4) any of the following:

- ✓ **Income.** Any source of income of \$500 or more (including promised income) during the prior 12 months for the official or official's spouse/domestic partner.
- ✓ **Business Management or Employment.** An entity for which the official serves as a director, officer, partner, trustee, employee, or manager.
- ✓ **Real Property.** A direct or indirect interest in real property of \$2000 or more that the official or official's immediate family (spouse/domestic partner and dependent children) have, including such interests as ownership, leaseholds (but not month-to-month tenancies), and options to purchase. Be especially alert when any of these are located within 500 feet of the subject of the official's decision.
- ✓ **Personal Finances.** The official or official's immediate family's (spouse/domestic partner and dependent children) personal expenses, income, assets, or liabilities.

- ✓ **Gift Giver.** A giver of a gift of \$420 (2009-10) or more to the official in the prior 12 months, including promised gifts.
- ✓ **Lender/Guarantor.** A source of a loan (including a loan guarantor) to the official.
- ✓ **Contract.** The official or a member of the official's family would have an interest (direct or indirect) in a contract that the agency is considering entering into.
- ✓ **Business Investment.** An interest in a business that the official or the official's immediate family (spouse/domestic partner and dependent children) have a direct or indirect investment worth \$2000 or more.
- ✓ **Related Business Entity.** An interest in a business that is the parent, subsidiary or is otherwise related to a business where the official:
 - Has a direct or indirect investment worth \$2000 or more; or
 - Is a director, officer, partner, trustee, employee, or manager.
- ✓ **Business Entity Owning Property.** A direct or indirect ownership interest in a business entity or trust of the official's that owns real property.
- ✓ **Campaign Contributor.** A campaign contributor of the official (applies to appointed decision-making bodies only).
- ✓ **Other Personal Interests and Biases.** The official has important, but non-financial, personal interests or biases (positive or negative) about the facts or the parties that could cast doubt on the official's ability to make a fair decision.

WHAT WILL HAPPEN NEXT?

Agency counsel will advise the official whether 1) the official can participate in the decision and, 2) if a contract is involved, whether the agency can enter into the contract at all. Counsel may suggest asking either the Fair Political Practices Commission or the State Attorney General to weigh in.

EVEN IF IT'S LEGAL, IS IT ETHICAL?

The law sets only minimum standards. Officials should ask themselves whether members of the public will question whether officials should act solely in the public's interest. If they might, officials should consider excusing themselves voluntarily from that particular decision-making process.

Beyond the Law: Ethics and Values

- Ethics is what one ought to do in a given situation. It's the kind of conduct that would make the world a better place particularly if everyone engaged in it.
- The law provides only minimum standards for ethical conduct. Just because a course of action is legal, doesn't make it ethical/what one ought to do.

- What one ought to do is typically tied to a series of values:

- *Trustworthiness*
- *Compassion*
- *Respect*
- *Loyalty*
- *Responsibility*
- *Fairness*

For more information on this topic, see *Understanding the Basics of Public Service Ethics: Promoting Personal and Organizational Ethics* at www.ca-ilg.org/ppoe.

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